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**From:** Radtke, Meghan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7A364F0FAAD54A79BE238288FA3496CF-RADTKE, MEGHAN]  
**Sent:** 1/19/2017 11:31:15 AM  
**To:** Galbraith, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0abf7f5c1a5e462e8096cb58ef9757eb-MGALBRAI]  
**Subject:** Fwd: TDUs  
**Attachments:** removed.txt; ATT00001.htm

Wasn't sure who else is working on this at the staff level. Trust you will distribute accordingly!

Meghan

Meghan Radtke, Ph.D.  
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Office of Resource Conservation and Recovery  
Office of Land and Emergency Management  
Office: 703-347-0229  
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Begin forwarded message:

**From:** "Johnson, Barnes" <[Johnson.Barnes@epa.gov](mailto:Johnson.Barnes@epa.gov)>  
**Date:** January 18, 2017 at 17:43:17 EST  
**To:** "Devlin, Betsy" <[Devlin.Betsy@epa.gov](mailto:Devlin.Betsy@epa.gov)>, "Elliott, Ross" <[Elliott.Ross@epa.gov](mailto:Elliott.Ross@epa.gov)>, "Sasseville, Sonya" <[Sasseville.Sonya@epa.gov](mailto:Sasseville.Sonya@epa.gov)>, "Guernica, Mimi" <[Guernica.Mimi@epa.gov](mailto:Guernica.Mimi@epa.gov)>, ORCR IO <[ORCR\\_IO@epa.gov](mailto:ORCR_IO@epa.gov)>  
**Cc:** "Michaud, John" <[Michaud.John@epa.gov](mailto:Michaud.John@epa.gov)>, "Lewis, Jen" <[Lewis.Jen@epa.gov](mailto:Lewis.Jen@epa.gov)>  
**Subject:** FW: TDUs

FYI – at the eManifest FACA meeting last week I asked David the specifics of his threatened suit. He offered to send me an email to explain. The discussion below outlines the basis of including EPA as a defendant in his threatened citizen suit.

## Barnes Johnson

USEPA | Resource Conservation and Recovery | Tel 703-308-8895 |  
[johnson.barnes@epa.gov](mailto:johnson.barnes@epa.gov) | [@EPAland](#)

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**From:** David Case [<mailto:dcase@etc.org>]  
**Sent:** Tuesday, January 17, 2017 2:59 PM  
**To:** Johnson, Barnes <[Johnson.Barnes@epa.gov](mailto:Johnson.Barnes@epa.gov)>  
**Subject:** TDUs

Barnes,

You asked me last week to explain the legal basis for including EPA in the citizen suit that has been drafted. Here is a short summary:

RCRA Section 3007 requires the Administrator or authorized state "to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a [RCRA] permit is required" at least every two years. RCRA uses the word "shall" which makes this inspection requirement a mandatory, non-discretionary duty. Upon information and belief, EPA has not conducted a RCRA inspection of the thermal desorption units (TDUs), nor has the State of Indiana.

In addition, RCRA Section 3005 requires a permit for the thermal treatment and disposal of hazardous wastes in the TDUs, and the regulatory exemption for recycling units does not apply. Because the facility does have a RCRA permit for its other hazardous waste activities, but not for thermal treatment and destruction of hazardous wastes in the TDUs, the Administrator also has a non-discretionary duty to revoke the facility's RCRA permit. RCRA Section 3005(e) provides: "Upon a determination by the Administrator ... of noncompliance by a facility having a permit under this chapter with the requirements of this section ..., the Administrator ... shall revoke such permit." The facility is in noncompliance with the requirements of RCRA section 3005 to obtain a RCRA permit for operation of the TDUs or to include the TDUs within its current permit. RCRA Section 3005(e) uses the word "shall" which makes permit revocation a mandatory, non-discretionary duty.

EPA can satisfy its non-discretionary duties under RCRA by conducting a thorough inspection of the TDUs' operations and including the TDUs within the facility's current or renewed RCRA permit. We believe the facility's RCRA permit is scheduled for renewal this year.

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David R. Case  
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● <!--[if !supportLists]--><!--[endif]-->Environmental Technology Council

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